

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0489 IK

Gross Income Tax

For Tax Period: 1994 Through 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. County Innkeeper's Tax: Applicability of Sales Tax Exemption

Authority: IC 6-2.5-3-7; IC 6-9-8-2 (1993); IC 6-9-8-2 (1997)

The taxpayer protests the assessment of uncollected innkeeper's tax on sales exempted from the state gross retail tax.

II. Tax Administration: Penalty

Authority: IC 6-8.1-6-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the assessment of a penalty.

STATEMENT OF FACTS

The taxpayer is a partnership operating a hotel in Indiana and subject to the Marion County Innkeeper's tax. Taxpayer collects sales tax and the innkeeper's tax when a room is let. However, when the taxpayer is provided with a sales tax exemption certificate, taxpayer collects neither tax. The audit division of the Department generated this assessment based on the position that the innkeeper's tax is still to be collected, although the transaction was not subject to sales tax. Further facts will be provided as needed for discussion.

I. County Innkeeper's Tax: Applicability of Sales Tax Exemption

DISCUSSION

The issue to be settled is one of statutory interpretation. Prior to a 1997 amendment, IC 6-9-8-2(C) read in part:

All of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, and administration shall be applicable to the imposition and administration of the tax imposed by this section except to the extent such provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer.

The Department has taken the position in this latest audit of taxpayer, that because the word “exemptions” is not included in this statute, taxpayer is liable for the collection of the innkeeper’s tax even if taxpayer has received a sales tax exemption certificate.

Section c of the Marion County Innkeeper’s tax (a similar section is contained in every Innkeeper tax statute) appears to state plainly that unless a conflict arises, all provisions of the State Gross Retail Tax statute (IC 6-2.5) apply to the Innkeeper’s tax. The Department’s position, while possibly a valid semantic argument, fails to take note that the exemption could be considered a subset of several of the enumerated provision types including rights, duties, liabilities, procedures and administration. The statute appears to include IC 6-2.5-3-7 as a provision that would apply to IC 6-9-8 and support taxpayer’s contention that sales tax exempt means innkeeper’s tax exempt.

The Department attempts to bolster its position with the passage of a 1997 amendment that added the word “exemptions” to the list in IC 6-9-8-2(c) of IC 6-2.5 provisions that are applicable. The Department argues that the legislature would not act redundantly. This being the case, the addition of the word “exemptions” to the statute would mean that, before the amendment, exemptions of IC 6-2.5 did not apply to IC 6-9-8. Equally persuasive, however is taxpayer’s argument that the legislature was merely clarifying what was meant in IC 6-9-8-2(c), responding to the Department’s position regarding the applicability of the sales tax exemptions to the innkeeper’s tax.

At hearing, taxpayer presented evidence that the legislature was approached about amending IC 6-9-8-2(c) in response to the Department’s position and resulting assessment. Subsequent to assessments of this type, the Indiana Hotel & Motel Association lobbied for an amendment to *clarify* what the legislature wanted. The legislature did indeed pass the amendment. Ultimately, taxpayer’s arguments are persuasive.

FINDING

The taxpayer's protest is sustained.

II. Tax Administration: Penalty

DISCUSSION

The Department can impose a ten percent (10%) negligence penalty under IC 6-8.1-10-2.1. This code section states, in pertinent part, that if “ the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty.”

Further, 45 IAC 15-11-2 states that “negligence on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary, reasonable taxpayer.”

The taxpayer must demonstrate that its actions involved the use of reasonable care, caution, or diligence, in attempting to comply with the law in order to avoid a penalty. The taxpayer has done this. The taxpayer's arguments and evidence do show that the taxpayer exercised reasonable care, caution or diligence in determining its liabilities.

FINDING

The taxpayer's protest of the penalty is sustained.